

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0078P

Use Tax

Calendar Years 1998, and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is an S-corporation that runs an auto body shop, paints buses and RV's, and designs graphic decals. Upon audit it was discovered that the taxpayer had no use tax accrual system in place and failed to self assess and pay tax for consumable supplies such as visqueen, tape, coveralls, brushes, rags, floor dry, buffing pads, polishing paste, office supplies, and other miscellaneous items. Taxpayer had no use tax accrual system in place.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states that the underpayment was not intentional but due to a misunderstanding regarding the taxability of certain items. Taxpayer further states it has instituted corrective measure to assure it is fully compliant in the future.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

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Taxpayer had no use tax accrual system in place and has failed to provide reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer's protest is denied.

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